

efficient means of bringing PCS to all areas in which there is a demand for these services.

A. Initial Licensing Procedures

If Congress grants the necessary authority, the Commission should utilize auctions as a basis for awarding PCS licensees. In the absence of such authority, the Commission should subject competing applicants to comparative hearings. Only as a last resort should the Commission rely upon lotteries.

As the Commission recognizes, auctions represent the most efficient means of allocating spectrum. Other agencies utilize auctions to allocate other scarce resources and other countries conduct auctions to allocate spectrum.^{36/} Auction winners are most likely to be those entities that place the highest value on the spectrum's intended use. As such, the Commission can expect those entities to utilize the spectrum that they have purchased in the most efficient manner. It is plainly in their self-interest to offer services to the public as quickly as

^{36/} NPRM, ¶¶ 91-92.

possible to earn a return on their investment.^{37/}

Rochester understands that, at present, the Commission does not possess the authority to auction spectrum. In the event that Congress does not provide it with the requisite authority, the Commission should engage in comparative hearings to award PCS licenses. The Commission can adopt comparative hearing procedures similar to those it promulgated for cellular license renewals.^{38/} Comparative hearings are certainly not a panacea. Not only are they expensive and time-consuming, they require the Commission to evaluate proposals that have yet to be deployed and may represent only the fondest wishes of applicants. However, by establishing strict rules governing post-licensing conduct, the Commission may mitigate the extent

^{37/} One fear expressed regarding the use of auctions is that small business enterprises may not have the resources necessary to compete successfully in an auction. This concern is misguided. First, economic efficiency dictates that a scarce resource should be allocated to the person that values it most. If a PCS license is, indeed, highly valuable, lending institutions and venture capitalists will be more than willing to advance the necessary funds for a small enterprise to compete successfully for a license. Second, strict oversight of post-licensing activities will ensure that, to the extent particular areas are not served, additional qualifying applicants can secure PCS licenses. Third, if the Commission is truly concerned about "spectrum-hogging," it may establish limits on the number of licenses a single entity -- or group of related entities -- may hold. At this time, Rochester does not advocate the last alternative.

^{38/} See License Renewal Order, ¶¶ 22-29.

to which applicants proffer gold-plated systems that they have no intention of constructing.^{39/} Comparative hearings, under streamlined procedures, represent the most palatable of the alternatives currently available to the Commission.

Conducting lotteries, although tentatively recommended by the Commission on the grounds of administrative convenience,^{40/} represents the least desirable solution. As the Commission has recognized -- in the cellular,^{41/} specialized mobile radio^{42/} and multipoint distribution^{43/} services -- lotteries provide unimaginable opportunities for speculative abuse. In the lottery process, application mills win and the public loses. If at all possible, the Commission should decline to rely upon lotteries as the basis for awarding PCS licenses.

Nonetheless, Rochester understands that the Commission may wish to utilize lotteries as a means of expediting the licensing process. Should the Commission do so, it must conduct such lotteries subject to the most careful scrutiny of

^{39/} Moreover, in the common carrier context, issues that increase the complexity of broadcast comparative hearings -- local content, diversity and the like -- should largely be absent.

^{40/} NPRM, ¶ 84.

^{41/} License Renewal Order, ¶ 33.

^{42/} NPRM, ¶ 84.

^{43/} Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Band, PR Dkt. 92-80, Notice of Proposed Rulemaking, FCC 92-173 (released May 8, 1992).

the financial and technical qualifications of tentative selectees. In particular, the Commission should reject its proposed "postcard" lottery proposal.^{44/} Under this scenario, applicants literally need to fill out only a postcard to participate, subject only to the need to demonstrate their financial and technical qualifications subsequent to the lottery. This proposal invites abuse. In effect, entry into the lottery is risk free. Such a process invites speculation without even a minimal showing of qualification. The Commission will likely be inundated with applications that have no purpose other than speculation. Such a procedure will do no more than delay the introduction of PCS.

Rather than utilize this process, the Commission, if it chooses to rely upon lotteries, should require an initial certification that the applicant is financially and technically qualified to hold a PCS license, and promulgate strict rules governing the showing necessary to support such a certification. The Commission's recently-promulgated rules governing competing applications in a license renewal

^{44/} NPRM, ¶ 85.

proceeding^{45/} should constitute the minimum qualifications necessary for a PCS license applicant.

B. Post-Award Guidelines

To ensure expeditious construction of PCS networks by licensees, the Commission should adopt rules -- and strict penalties for failure to comply therewith -- governing post-award conduct of PCS licensees. These rules should ensure -- regardless of the method chosen to award licenses -- that licensees actually provide service to the public. At a minimum, such rules should:

- prohibit alienation of a license for some specified period, such as two years;
- require the construction of a system or systems that cover a specified percentage of the population or territory of a particular area within a specified time period; and
- provide for license revocation or the limitation of an entity's service area for failure to comply with the above requirements.

Similarly, the Commission should make available to other applicants territories that initial licensees choose not to serve within a certain number of years -- five, for example -- after the resolution of frequency conflicts with incumbent occupants of the spectrum allocated to PCS.

^{45/} License Renewal Order, ¶¶ 22-29.

Finally, the Commission should adopt renewal procedures along the lines that it has proposed for cellular licenses. As it should with respect to cellular licensees,^{46/} the Commission should adopt a conclusive renewal expectancy for those licensees that so qualify.

IV. THE COMMISSION SHOULD ADOPT
RECIPROCAL INTERCONNECTION
OBLIGATIONS BASED UPON CRITERIA OF
TECHNICAL AND ECONOMIC FEASIBILITY.

The Commission should base interconnection obligations upon one overriding principle -- the ability of users to communicate regardless of their network provider. This principle should lead the Commission to adopt two broad policies governing interconnection: the interconnection of PCS systems with each other; and the interconnection of PCS systems with other networks. To achieve these policy objectives, the Commission should establish a reciprocal right of interconnection among all network providers.

The Commission should endeavor to ensure that PCS networks themselves are interoperable. This step is necessary to permit customers of one PCS provider to reach customers of another. Unless different PCS systems are to operate as stand-alone islands -- a result that plainly would not serve

^{46/} See Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Dkt. 90-358, Response of Rochester Telephone Mobile Communications to Petitions for Reconsideration (April 16, 1992).

the public -- interoperability of different PCS networks will be an important policy goal.

Toward this end the Commission should establish a policy favoring the development of common air interfaces ("CAIs"). The Commission, however, should not attempt to prescribe the technical details of any CAIs. Rather, it should encourage the appropriate standards bodies to undertake the development of the technical specifications that would support particular CAIs. Such work will likely require an extensive undertaking among all industry participants and, therefore, that effort should best be left, in the first instance, to the appropriate standards organizations.

The Commission also correctly proposes to afford PCS providers a federally-protected right to interconnect to the public switched network, as it has afforded other providers of radio-based services.^{47/} This proposal constitutes another recognition that the ability of customers of all network providers to communicate with each other is an important national policy objective.

The Commission's proposal, however, does not go far enough. Rather than limit its proposed interconnection right to PCS providers, the Commission should make reciprocal any interconnection policies that it adopts. If the

^{47/} NPRM, ¶ 53.

Commission's goal is to establish a seamless communications capability, reciprocity is an essential ingredient. Users of the public switched network should have the same right of access to PCS users as the Commission proposes should exist in the opposite direction. Only by making interconnection rights and obligations reciprocal, will the Commission achieve this goal. Indeed, as a greater volume of communications -- especially voice communications -- travels through the air rather than over land-based media, it may become more important for an interconnection right to exist in the direction opposite to the one the Commission is proposing.

To implement a policy of reciprocity, the Commission should establish a basic standard that a reciprocal right of interconnection exists, but that such right is subject to technical feasibility and the exchange of appropriate compensation. Adoption of a reciprocity principle would merely extend the interconnection principles -- technical feasibility and compensation -- that currently apply in the cellular context more broadly and apply those principles both to radio and landline operations.

At this point, however, the Commission should not prescribe technical interconnection standards nor determine, in the first instance, what constitutes appropriate compensation. Technical interconnection requirements are likely to vary based upon any number of factors -- the nature of the requester's network, the specific needs for which interconnection is

requested, the type of equipment involved and the like. Moreover, interconnection requirements are likely to evolve over time. To accommodate differing needs and network evolution, the Commission, in the first instance, should permit affected parties to negotiate the details of specific interconnection arrangements. Similarly, the Commission should decline to specify in advance what it considers appropriate compensation. The Commission should permit affected parties to negotiate the terms of compensation for reciprocal access to each other's networks.

The ability of affected parties to negotiate such arrangements will not lead to anticompetitive results. The Communications Act generally prohibits unreasonable discrimination in rates, terms and conditions in services provided to similarly situated customers. Thus, the Commission already possesses the necessary tools to prevent discrimination.

Moreover, with the existence of alternatives among a variety of network providers, the incentive to engage in discrimination will not exist. A refusal by one network provider to offer interconnection to another on reasonable terms and conditions will result in that provider losing revenues.

The existence of a reciprocity principle, together with the highly competitive nature of the communications industry, including the landline local exchange business, will ensure that anticompetitive or discriminatory conduct is unlikely to

occur. On this basis, the Commission can, and should, leave to affected parties the technical and economic details of any proposed interconnection arrangements.

Conclusion

For the foregoing reasons, the Commission should adopt its proposed rules, with the modifications suggested herein.

Respectfully submitted,



JOSEPHINE S. TRUBEK
General Counsel

ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646
(716) 777-6713

Michael J. Shortley, III
of Counsel

November 6, 1992

(3044P)

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 1992, I caused copies of the foregoing Comments of Rochester Telephone Corporation to be served on all of the parties on the attached Service List by depositing same with the United States Post Office, postage prepaid, first class mail.

Michael J. Shortley, III

Michael J. Shortley, III

Attachment

(3044P)

Service List

Floyd S. Keene
JoAnne G. Bloom
30 South Wacker Drive
Suite 3900
Chicago, IL 60606

Randall B. Lowe
Sherry F. Bellamy
John E. Hoover
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088

Thomas Gutierrez
David A. LaFuria
Attorneys for MTEL PCN, Inc.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D.C. 20006

Robert M. Jackson, Its attorney
Blooston, Modkofsky, Jackson &
Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

William H. Talmage, Esq.
Chief Counsel, Regulatory Section
Law Department
NCR Corporation
1700 S. Patterson Blvd.
Dayton, OH 45479

Andrew D. Lipman
Catherine Wang
Shelly L. Spencer
Swidler & Berlin
3000 K Street, N.W.
Washington, D.C. 20007

Counsel for GEC Plessey
Telecommunications Ltd.

R. Michael Senkowski
Victoria F. Phillips
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

John C. Carrington
Managing Director
Mercury Personal Communications
Network, Ltd.
1 Harbour Exchange Square
London E14 9GET
United Kingdom

Gene H. Kuhn
Director Telecommunications
Transmission
Union Pacific Railroad Co.
Missouri Pacific Railroad Co.
1416 Dodge Street
Omaha, Nebraska 68179

David A. Hendon
Deputy Director of Technical Affairs
Telecommunications and Posts Division
Department of Trade and Industry
Kingsgate House
66-74 Victoria Street
London SW1E 6SW

Karl Berolzheimer
Senior Vice-President,
General Counsel and Secretary
Centel Corporation
8725 Higgins Road
Chicago, Illinois 60631

Jonathan D. Blake
D. Scott Coward
Covington & Burling
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Attorneys for American
Personal Communications

Robert S. Foosaner, Esq.
Lawrence R. Krevor, Esq.
Fleet Call, Inc.
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20036

Michael S. Slomin, Senior Attorney
Bell Communications Research, Inc.
290 W. Mt. Pleasant Avenue
Livingston, New Jersey 07039

Janice E. Kerr
Edward W. O'Neill
Patrick S. Berdge
505 Van Ness Avenue
San Francisco, CA 94102

James R. Young
Lawrence W. Katz
Attorneys for Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 20006

Charles M. Meehan
Jeffrey L. Sheldon
Mara J. Pastorkovich
Utilities Telecommunications Council
1620 Eye Street, N.W.
Suite 515
Washington, D.C. 20006

William L. Fishman
Sullivan & Worcester
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Raymond A. Kowalski
Blooston, Mordkofsky, Jackson &
Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Booth, Freret & Imlay
1920 N Street, N.W.
Suite 150
Washington, D.C. 20036

Christopher D. Imlay, Its Counsel
for The American Radio Relay
League, Incorporated

Wayne V. Black
Frederick J. Day
Michael R. Bennet
Keller and Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Attorneys for The American
Petroleum Institute
Attorneys for Special Industrial
Radio Service Association, Inc.

Charles T. Force
Associate Administrator
for Space Operations
National Aeronautics and
Space Administration
Washington, D.C. 20546

Stuart Dolgin
House Counsel
17 Battery Place, Suite 1200
New York, New York 10004-1256

G. Todd Hardy
Vice President and General Counsel
of PCN America, Inc.
153 East 53rd Street
Suite 5500
New York, New York 10022

Hollis G. Duensing
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

Stanley J. Moore
Attorney for Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
4th Floor
Washington, D.C. 20004

Robert E. Tall
Executive Director
Associated Public-Safety
Communications Officers, Inc.
P.O. Box 669
New Smyrna Beach, FL 32170

Alan Y. Naftalin
George Y. Wheeler
Margot S. Humphrey
Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Telephone and Data
Systems, Inc.

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

James A. Dwyer, Jr.
2100 Electronics Lane
Fort Myers, FL 33912

Russel H. Fox, President
American SMR Network Association
Inc.
1835 K Street, N.W. Suite 203
Washington, D.C. 20006

John D. Lane
Robert M. Gurss
Wilkes, Artis, Hedrick & Lane,
Chartered
1666 K Street, N.W., #1100
Washington, D.C. 20006-2866

Attorneys for Los Angeles County
Sheriff's Department

James F. Lovette
Apple Computer, Inc.
20525 Mariani Avenue, MS46A
Cupertino, CA 95014

Albert Halprin
Stephen L. Goodman
Verner, Liipfert, Bernhard
McPherson and Hand
901 15th Street, N.W.
Washington, D.C. 20005

Counsel for Northern Telecom Inc.

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081

Werner K. Hartenberger
Suzanne M. Perry
Adina Kanefield
Dow, Lohnes & Albertson
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

Their Attorneys for Cox Broadcasting
Multimedia, Inc.

Daniel L. Bart
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Joseph P. Markoski
Jody D. Newman
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Attorneys for County of Los Angeles

Donald F. Evans
Director, Technical Regulatory
Affairs
MCI Telecommunications Corporation
1133 19th Street, N.W.
Washington, D.C. 20036

James G. Ennis, Esq.
Barry Lambergman, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Dr. Robert L. Riemer
Senior Program Officer
Board on Physics and Astronomy
National Research Council
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

PCN Associates
1344 Madonna Road
Suite 207
San Luis Obispo, CA 93405

Eric J. Schimmel
Vice President
TIA
2001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-1813

M. John Bowen, Jr.
John W. Hunter
McNair Law Firm, P.A.
1155 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Rock Hill Telephone Co.
Fort Mill Telephone Company
Lancaster Telephone Company

Quincy Rodgers
Associate General Counsel
General Instrument Corporation
1155 21st Street, N.W., 4th Flr.
Washington, D.C. 20036

Jeffrey Krauss
Consultant
15200 Shady Grove Road
Suite 450
Rockville, MD 20850

James T. Carter
Rockwell International Corp.
P.O. Box 568842
M/S 406-158
Dallas, Texas 75356-8842

Daniel J. Miglio
Senior Vice President
Finance & Planning
227 Church Street
New Haven, Connecticut 06510

Pete Wanzenried, Assistant Chief
State of California Dept. of
General Services Telecommunications
Division
601 Sequoia Pacific Blvd.
Sacramento, CA 95814-0282

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle
Suite 800
One Thomas Circle
Washington, D.C. 20005

Howard C. Davenport
Peter G. Wolfe
Public Service Commission
of the District of Columbia
450 Fifth Street, N.W.
Washington, D.C. 20001

Louis Martinez, President
Radio Telcom and Technology, Inc.
17321 Valley View Avenue
Cerritos, CA 90701

Judith St. Ledger-Roty
Nancy J. Thompson
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Attorneys for Paging Network, Inc.

Paul J. Sinderbrand
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse
Washington, D.C. 20005-3919

Attorneys for The Wireless Cable
Association, Inc.

Dr. Michael C. Trahos
D.O., NCE, CET
4600 King Street, Suite 4E
Alexandria, Virginia 22302

Thomas J. Casey
Jay L. Birnbaum
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Attorneys Cellular Communications,
Inc.

Michael C. Rau
Kelly T. Williams
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Peter Tannenwald
Arent, Fox, Kintner,
Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Edward P. Taptich
Laura C. Mow
Gardner, Carton & Douglas
Suite 750
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Attorneys for USA Mobile Communications,
Inc. II

John W. Pettit
Thomas K. Crowe
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for Tandy Corporation

David C. Jatlow
Counsel for the Ericsson Corporation
Young & Jatlow
Suite 600
2300 N Street, N.W.
Washington, D.C. 20037

Robert W. Maher, President
Jack W. Whitley
Director of Regulatory Affairs
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Suite 300
Washington, D.C. 20036

Patrick J. O'Shea
Mary McDermott
Patrick J. O'Shea
NYNEX Corporation
120 Bloomingdale Road
White Plains, NY 10605

Raul R. Rodriguez
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809

William B. Barfield
R. Frost Branon, Jr.
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367-6000

Counsel for BellSouth Corporation

Colin R. Green
The Solicitor and Chief Legal Advisor
The Solicitor's Office
British Telecommunicaitons plc
81 Newgate Street
London, EC1A 7AJ
United Kingdom

Francine J. Berry
Mark C. Rosenblum
Robert J. McKee
Room 3244J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Attorneys for American Telephone
and Telegraph Company

James D. Ellis
Liam S. Coonan
James S. Golden
Mark P. Royer
Darryl W. Howard
One Bell Center
Room 3504
St. Louis, Missouri 63101

Attorneys for Southwestern
Bell Corporation